

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO[Redacted]

In the Matter of the Protest of)	
)	DOCKET NO. 15794
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On December 12, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting an Idaho income tax deficiency, plus late-filing penalty and interest, in the total amount of \$773,753 for the 1988 through 1998 taxable years. On February 7, 2001, the taxpayer filed a timely appeal and petition for redetermination. An informal conference was held via telephone on August 5, 2003. The Tax Commission, having reviewed the file, hereby issues its decision.

This is a domicile case involving an individual who, during the years under review, owned and occupied homes or apartments in the states of [Redacted]Idaho. It is undisputed that prior to 1988 Ms. [Redacted] was domiciled in [Redacted]. It is also undisputed that by at least the start of the 1999 taxable year Ms. [Redacted]had changed her domicile to [Redacted]. Thus, this dispute centers on whether Ms. [Redacted]changed her domicile from [Redacted] to Idaho at some point between 1988 and 1998. As discussed in greater detail below, the Tax Commission finds that Ms. [Redacted]did change her domicile to Idaho in September 1993 and that she remained an Idaho resident until February 1, 1997. As a result, the Commission finds that Ms. [Redacted]was a part-year resident of Idaho in 1993 and 1997 and a full year resident during 1994, 1995, and 1996. She was not a resident of Idaho during any of the other years at issue in this administrative protest.

FACTS AND PROCEDURAL HISTORY

In October, 1987, [Redacted] purchased a home at [Redacted] Idaho. According to Ms. [Redacted], the [Redacted] property is a log cabin that was purchased as a vacation home so that she and her teen-aged son would have a place to go to get away from the hot [Redacted] summers. At the time, Ms. [Redacted] was living in [Redacted], [Redacted], with her son at a large estate at [Redacted]. Ms. [Redacted] describes the [Redacted] estate as follows:

Our son, [Redacted], was two years old when I found a house [in [Redacted]] by walking by it one day and seeing a sign in the rather overgrown front yard. It was two and a half blocks away and needed a great deal of work but its “bones” were great and we were quite happy with it. I renovated it and decorated it over the course of two years, moving in in 1981 and anticipating that I would eventually leave it, feet first, somewhere around the age of 87.

This house is part of a compound, which came to be [Redacted], and occupies half a [Redacted] city block. Besides the house there is a two story poorhouse [sic], a pool, a four-car garage with a two-bedroom apartment over it, a conservatory, a fountain garden, an azalea garden, a pool garden and an internal driveway, all surrounded by an 8-foot wall, two vehicle gates and 5 footages. There is approximately 12,000 square feet of interior space under roof. . . .

November 12, 2001, letter from [Redacted], p. 2.

After purchasing the cabin in [Redacted], Ms. [Redacted] spent the summers in Idaho but maintained her primary residence in [Redacted], [Redacted]. This continued until the fall of 1991, when Ms. [Redacted] enrolled her son into [Redacted], Idaho. Ms. [Redacted]’s son was in the eighth grade when he started attending classes in [Redacted]. He remained a student at the [Redacted] until he graduated in June, 1996. During this period [September 1991 through June 1996], Ms. [Redacted] and her son spent considerably more time in [Redacted], Idaho, than they did in [Redacted]. Based on the analysis provided by Ms. [Redacted]’s representative, she spent a total of 95 days out of a possible 122 days in [Redacted] during September through December,

1991. From 1992 through 1996, Ms. [Redacted] spent approximately 55 percent of her time at her home in [Redacted] and only 18 percent of her time at her home in [Redacted]. Much of the remainder of her time was spent in [Redacted] where she leased an apartment.

In January, 1992, Ms. [Redacted] exchanged her home at [Redacted], plus \$1,000,000 and another lot she owned in [Redacted], in exchange for a home located at [Redacted]. The [Redacted] property was still under construction when it was acquired, and Ms. [Redacted] and her son did not actually move into that home until November, 1992. During the months of February through October of 1992, while construction was being completed on the [Redacted] home, Ms. [Redacted] rented a house in [Redacted].

After moving into the [Redacted] home in November 1992, Ms. [Redacted] continued to occupy that home until April 1997 when she sold the home and moved all of her belongings to her new home that she had recently purchased in [Redacted], [Redacted].

In September 1993 there was a significant change in circumstances with respect to Ms. [Redacted], [Redacted], home. On September 13, 1993, Ms. [Redacted] entered into a lease agreement whereby she rented her home at [Redacted] to a third party. According to Ms. [Redacted]: “I knew I couldn’t maintain two houses [one in [Redacted] and one in [Redacted]] and an apartment in [Redacted] simultaneously and felt I had to keep the house in [Redacted] set up for my son as a ‘home away from home’ while he was in school.” November 12, 2001, letter from [Redacted], p. 5 – 6. As a result, Ms. [Redacted] decided to rent out her [Redacted] home “until it made sense to spend more time there.” Id. at p. 6. While she rented out the main house, Ms. [Redacted] “made up the two-bedroom apartment over the garage at [Redacted] into living quarters for myself.” Id. Thus, as of September 13, 1993, Ms. [Redacted] no longer occupied the main home at [Redacted] but, instead, maintained a two-bedroom apartment over the garage.

Although not entirely clear, it appears that Ms. [Redacted] maintained this apartment over the garage at [Redacted] for approximately two years.¹ In June 1995, she leased an apartment at [Redacted]. In July, 1996, Ms. [Redacted] sold the [Redacted] estate. Thus, from mid-September, 1993 until July, 1996, it appears that Ms. [Redacted] did not occupy the main home at [Redacted] and, instead, offered that home as a rental. During this time, Ms. [Redacted] maintained an apartment where she stayed when she traveled to [Redacted]

OPINION

For some inexplicable reason, the Tax Commission's Tax Discovery Bureau asserted that Ms. [Redacted] was a resident of Idaho commencing in 1988. In reviewing the audit file, the Commission can find no conceivable justification for this position. While Ms. [Redacted] did purchase a home in [Redacted] Idaho, in October 1987, the information contained in the audit file clearly indicates that she did not abandon her primary home in [Redacted], [Redacted], until the fall of 1991 at the earliest. Because there are no facts that support the finding that Ms. [Redacted] was a resident of Idaho during 1988 through 1990, the Tax Commission hereby vacates the Notice of Deficiency Determination with respect to those taxable years. No further discussion is necessary.

¹ The evidence is conflicting with respect to whether Ms. [Redacted] moved back into the main house at [Redacted] during the two-year period from the date she originally rented out the main house and the date she moved into an apartment in [Redacted]. In her letter of November 12, 2001, Ms. [Redacted] indicates that the original tenants did not take proper care of the premises and that the lease agreement was terminated and new tenants then moved into the home. November 12, 2001, letter from [Redacted], p. 6. This is consistent with the 1995 federal individual income tax return filed by [Redacted] which shows that in 1995 she received rent payments of \$39,000 from the rental of the [Redacted] residence. However, in a letter from Ms. [Redacted] representative dated December 18, 2003, it is inferred that once the lease agreement with the original tenants was terminated in early 1994, Ms. [Redacted] may have moved back into the main house. If true, then Ms. [Redacted] move from the main house into the apartment above the garage was for only a period of approximately three months; not two years. However, other than the inference contained in the letter from Ms. [Redacted]s representative, there is no evidence indicating that Ms. [Redacted] ever moved back into the main house at [Redacted] once she started renting that house in September, 1993.

It should also be noted that the Tax Commission finds no justification in the file to support the Tax Discovery Unit's finding that Ms. [Redacted] was a full-year resident of Idaho in 1997 and 1998. It is clear that by early April, 1997, Ms. [Redacted] had moved out of her former [Redacted], Idaho home and into her current home in [Redacted], [Redacted]. Thus, at best, she was a part-year resident of Idaho during 1997, and she was unquestionably a nonresident of this state in 1998. As a result, the Tax Commission hereby vacates the Notice of Deficiency Determination with respect to the 1998 taxable year. For the 1997 taxable year the Tax Commission will modify the Notice of Deficiency Determination to reflect that Ms. [Redacted] was a part-year resident of Idaho.

Notwithstanding the years covered by the Notice of Deficiency Determination, the true issue in this administrative protest is whether [Redacted] was a resident or part-year resident of the state of Idaho during some or all of the 1991 through 1997 taxable years. Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. Idaho Code § 63-3002. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. Id. A part-year resident, as the name might suggest, is required to report and pay Idaho income tax on all his or her taxable income received during the time he or she was residing in this state, and on his or her Idaho source income received during the time he or she was not residing in this state.

During the 1991 through 1995 taxable years, the term "resident" was defined in the Idaho tax laws as follows:

Resident. – The term "resident," for income tax purposes, means any individual who:

- (a) Has resided in this state for the entire taxable year; or

(b) Is domiciled in the state of Idaho,

Idaho Code § 63-3013 (1989 & Supp. 1995). Effective for tax years beginning on or after January 1, 1996, the Idaho Legislature changed the definition of the term resident. The Idaho law now reads as follows:

Resident. – (1) The term “resident,” for income tax purposes, means any individual who:

(a) Is domiciled in the state of Idaho for the entire taxable year; or

(b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Idaho Code § 63-3013 (1996 & Supp. 1999).

Domicile is defined in the Tax Commission’s Administrative Rules as “the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.” Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2 (2001). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke’s Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual’s domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State

Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996) (The Tax Commission's regulation defining domicile is consistent with prior holdings of the Idaho Supreme Court, "with the element of intent divided into two parts.") Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). See generally, Restatement, Second, Conflict of Laws § 19 comment c (1971). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. See Ramsey v. Ramsey, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed and permanent home. The term "home" as used in the Restatement, Conflicts of Law 2d, means "the place where a person dwells and which is the center of his domestic, social and civil life." Rest., Conflicts of Laws 2d, § 12. The Restatement goes on to provide that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative

significance because of the person's identification with that place.” Rest., Conflicts of Laws 2d, § 11(1). The comments to this section of the Restatement emphasizes that a person's domicile is usually that person's home.

“A person's domicile is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicile of choice, and in such instances the law may assign them as their domicile a place where their home is not located. (see §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20.

Rest., Conflicts of Laws 2d, § 11(1), comment 1a. Those comments go on to provide that “[w]hen a person has one home and only one home, his domicile is in the place where his home is, except as stated in § 16, Comment c and §§ 22-23, relating to domicile in a vehicle and to persons who lack legal capacity to acquire a domicile of choice.” Rest., Conflicts of Laws 2d, § 11(1), comment 1h. Thus, with only a few exceptions, a person who only has one home will be domiciled at that place where his home is.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement, Conflict of Laws 2d, provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides as follows: “When a person with capacity to acquire a domicile of choice has more than one dwelling place, his domicile is in the earlier dwelling place unless the second dwelling place is his principal home.” The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides in part as follows:

b. If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicile will be at the dwelling place which is his home.

2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicile is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

....

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicile remains at that one of the two dwelling places which was first established. This is because a domicile, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., Conflict of Laws 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his or her primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."

2. Whether the home is owned, rented, or provided free of charge.
3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individual's principal or primary home.
4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.
5. How much time is spent at each home. Generally, as between two or more homes, the home where the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.
6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
7. Which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-and-dear" items is more likely to be considered that individual's principal or primary home.

Applying these factors to the facts of this administrative protest, it is clear that as of September 13, 1993, Ms. [Redacted], Idaho, home was her primary home. As between her home at [Redacted], Idaho, and her two-bedroom apartment over the garage at [Redacted], [Redacted], the Idaho home was certainly larger and more valuable. In addition, it is undisputed that Ms.[Redacted] spent more time at her [Redacted]home. During 1993 through June, 1996, her minor son was attending high school in [Redacted], Idaho and, in all likelihood, considered the home in [Redacted] to be his primary residence. Finally, it appears that Ms. [Redacted]kept her pet dog and most of her other "near and dear" items primarily at her home in [Redacted]. The Tax Commission finds that once Ms. [Redacted] moved out of the main house at [Redacted], her home in [Redacted] Idaho, was no longer treated as her "vacation" or "second" home. Rather, it became her primary home and principal establishment and the place that she intended to return to whenever she was absent. In short, it became her domicile.

Ms. [Redacted] states that during the years at issue she continued to vote in [Redacted], continued to hold a [Redacted] driver's license, served on jury duty in [Redacted], and was "still involved in various museums in [Redacted] as well as still sitting on the [Redacted]." November 12, 2001, letter from [Redacted], p. 5. In short, Ms. [Redacted] argues that her social and civic connections with [Redacted] did not decrease or fundamentally change even after she moved out of the main house at [Redacted]. While these continuing social and civic connections with [Redacted] are important and should not be overlooked, the totality of the circumstances convince us that Ms. [Redacted]'s home in [Redacted] became her primary home and domicile, while her apartment in [Redacted] was her secondary home and the place she stayed when she visited [Redacted] to vote or to attend the various civic functions and social events that she continued to participate in. When the purpose for her visits to [Redacted] were concluded, Ms. [Redacted] invariably returned to her home at [Redacted], Idaho.

Based on the foregoing, the Tax Commission finds that [Redacted] changed her domicile from [Redacted] to Idaho as of September 13, 1993. The next question to be addressed is when Ms. [Redacted] changed her domicile from Idaho to [Redacted]. Prior to December, 1996, Ms. [Redacted] maintained an apartment in [Redacted] that she used when she was visiting that state. In December, 1996, she purchased a home in [Redacted]. According to Ms. [Redacted], she occupied that home in January, 1997. In April 1997, Ms. [Redacted] sold her home in [Redacted] and moved her belongings into her new home in [Redacted]. According to the schedule of days spent in Idaho that was provided by Ms. [Redacted]'s representative, she spent 31 days in Idaho in January, 1997, zero days in February, 9 days in March, and 30 days in April. Between February 1, 1997 and April 30, 1997, it appears that Ms. [Redacted] was in the process of moving out of her [Redacted] home and into her [Redacted] home. She traveled back and forth

between [Redacted] and Idaho for this purpose. However, as of February 1, 1997, it is clear that Ms. [Redacted] had the specific intent to abandon her Idaho domicile and to create a new domicile in [Redacted]. As a result, the Tax Commission finds that Ms. [Redacted] changed her domicile from [Redacted], Idaho, to [Redacted], on February 1, 1997.

To summarize, the Tax Commission hereby determines that [Redacted] was a nonresident of Idaho during the 1988 through 1992 taxable years; that she was a part-year resident in 1993, having changed her domicile from [Redacted] to Idaho effective September 13, 1993; that she was a full-year resident of Idaho during 1994 through 1996; and that she was a part-year resident in 1997, having changed her domicile from Idaho to [Redacted] effective February 1, 1997.

ADDITIONAL AUDIT ADJUSTMENTS

There are two additional issues that need to be addressed. First, while Ms. [Redacted] was not a resident of Idaho during 1992, the Commission finds that she did receive Idaho source income during that taxable year in excess of the minimum filing amount. More specifically, in reviewing Ms. [Redacted]'s 1992 federal individual income tax return, it was discovered that she reported a capital gain of \$153,338 relating to the exchange of her cabin at [Redacted], Idaho, and a capital gain of \$58,538 from the exchange of the lot she owned at [Redacted] Idaho. This gain is from the sale or exchange of Idaho real property and is, therefore, Idaho source income. See former Idaho Code § 63-3027A (1989 & Supp. 1992) and former Income Tax Administrative Regulation 27A, 1.c.v (IDAPA 35.01.01.27A, 1.c.v (1992)) (Income from Idaho sources includes "Gains, profits, and income from the sale of real property located in Idaho."). As a result, the Notice of Deficiency Determination that is the subject matter of this appeal will be modified to reflect that for the 1992 taxable year Ms. [Redacted] received Idaho source income in the total amount of \$211,876. In addition, the record before the Commission

indicates that Ms. [Redacted] owned the lot at [Redacted] for more than five years prior to the taxable exchange of that property. As a result, she is entitled to the 60% Idaho capital gain deduction set out in Idaho Code § 63-3022H (Supp. 1992) on the \$58,538 gain recognized in 1992. The Notice of Deficiency Determination will be modified to reflect this deduction.

The next issue to be addressed is whether the estimated Idaho taxable income for the 1993 through 1997 taxable years was overstated or understated in calculating Ms. [Redacted]'s Idaho income tax liability. Ms. [Redacted]'s representative contends that even if Ms. [Redacted] was a resident of Idaho for income tax purposes in 1993 through 1997, the amount of Idaho income tax shown due on the Notice of Deficiency Determination was overstated because it did not give her credit for her itemized deductions or for the taxes that she paid to the state of Louisiana. In reviewing the Notice of Deficiency Determination, the Commission finds that for the 1993 taxable year Ms. [Redacted] was allowed a deduction for the full amount of itemized deduction she reported on line 34 of her federal income tax return. The Tax Discovery Bureau was able to obtain a copy of Ms. [Redacted]² However, because the Tax Discovery Bureau was unable to obtain a copy of Ms. [Redacted], she was only allowed the standard deduction in computing her Idaho taxable income for those years. In addition, no credit for taxes paid to another state was allowed.

During the pendency of this administrative protest, the Tax Commission has been able to obtain [Redacted] copies of Ms. [Redacted].³ Based on a review of these [Redacted], the

² Ms. [Redacted] attached a copy of her federal individual income tax return to the [Redacted] individual income tax returns she filed with that state for 1992 and 1993. No federal return was attached to the [Redacted] tax returns she filed for 1994 and 1995. Ms. [Redacted] did not file a [Redacted] individual income tax return for the 1996 or 1997 taxable years.

³ The [Redacted] report provided by [Redacted] lists, among other things, the adjusted gross income and the taxable income reported by Ms. [Redacted] on her 1994 federal return. By comparing these two figures, and taking into account the personal exemption amount that Ms. [Redacted] would have been entitled to in 1994, the Commission is able to back into the amount of itemized deductions that in all likelihood was reported by Ms. [Redacted] for 1994.

Commission finds that Ms[Redacted] is entitled to deduct as itemized deductions the following amounts:

1994	\$149,778
1995	132,076
1996	121,795
1997	87,152

In addition to allowing the itemized deductions reported by Ms[Redacted] for the 1994 through 1997 taxable years, the Tax Commission also finds that the taxable income listed on the December 12, 2000 Notice of Deficiency Determination must be adjusted to include federal tax-exempt interest income which, under Idaho law, is not exempt from tax. In reviewing Ms. [Redacted]'s 1993 and 1995 through 1997 federal individual income tax returns, the Commission finds that Ms. [Redacted] reported federal tax-exempt interest income in each of those years as follows:

1993	\$261,683
1995	269,975
1996	228,153
1997	156,887

Under Idaho's tax laws, this interest income is taxable if received by a resident of this state unless it relates to securities issued by the state of Idaho or a political subdivision of this state. See Idaho Code § 63-3022(a) (1989 & Supp. 1994). Based on the information currently available to the Tax Commission, none of this interest income appears to relate to securities issued by the state of Idaho or by a political subdivision of this state. As a result, all of this interest income is taxable by the state of Idaho to the extent it was received while Ms. [Redacted] was residing in Idaho.

It seems reasonable to believe that on Ms. [Redacted]'s 1994 federal income tax returns she also reported a significant amount of interest income that is exempt from federal tax but not

from Idaho tax. This federal tax-exempt income would not show up anywhere on the [Redacted] transcripts that were obtained by the Tax Discovery Bureau. [Redacted]

In summary, with respect to the 1993 taxable year, the Notice of Deficiency Determination must be adjusted not only to treat Ms. [Redacted] as a part-year resident of Idaho, but also to include in the Idaho taxable income computation the amount of [Redacted]. Since the record currently before the Tax Commission does not indicate that any of that interest income was from securities issued by the state of Idaho or a political subdivision of this state, all of that interest income will be treated as subject to Idaho tax. Furthermore, absent some evidence to the contrary, the Commission finds that one-fourth of the interest income reported [Redacted] was received on or after September 13, 1993. Therefore, one-fourth of the interest income [Redacted] will be treated as Idaho taxable income. See former Idaho Code § 63-3027A(b) (1989 & Supp. 1993) (“taxable income of part-year resident individuals . . . shall include taxable income wherever derived for the portion of the tax period during which a taxpayer is a resident of Idaho . . .”).

For the 1994 through 1996 taxable years the Commission finds that Ms. [Redacted] was a full-year resident of this state. However, the December 12, 2000 Notice of Deficiency Determination relating to those taxable years must be modified to include the actual or estimated amount of federal tax-exempt interest income that is subject to Idaho tax, and to allow the itemized deductions reported by Ms. [Redacted] on her federal income tax return. After making these adjustments, the Tax Commission determines that Ms. [Redacted] had Idaho taxable income of \$306,066 for the 1994 taxable year, \$785,839 for the 1995 taxable year, and \$169,759 for the 1996 taxable year.

For purposes of the 1997 tax deficiency, the Commission finds that Ms. [Redacted] received \$156,887 in federal tax-exempt interest during that year, and that one-twelfth (1/12) of that interest income was received during the month of January, 1997. Thus, Ms. [Redacted] Idaho taxable income for 1997 will be increased by \$13,074 [1/12 of \$156,887] to account for the estimated federal tax-exempt interest income that was received by Ms. [Redacted] in January of that year; before she changed her domicile from Idaho to [Redacted]. Ms. [Redacted] is also entitled to a prorated amount of her itemized deductions. After making these adjustments, the Tax Commission determines that Ms. [Redacted] had Idaho taxable income of \$9,012 for the 1997 taxable year.

A worksheet setting forth the revised computation of Ms. [Redacted]'s Idaho taxable income, and the Idaho income tax owed, is attached to this Decision as Appendix 1.

ORDER

WHEREFORE, the Notice of Deficiency Determination dated December 12, 2000, is hereby MODIFIED in accordance with the provisions of this decision, and as so MODIFIED is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1992	\$12,075	\$ 3,019	\$10,268	\$25,362
1993	4,469	1,117	3,330	8,916
1994	24,281	6,070	16,247	46,598
1995	53,428	13,357	31,102	97,887
1996	13,410	3,353	6,696	23,459
1997	393	98	162	<u>653</u>
TOTAL AMOUNT DUE				<u>\$202,875</u>

Interest is calculated through January 31, 2004, and will continue to accrue at the rate set out in Idaho Code § 63-3045(6)(b).

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
